

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

HOAGLAND ELECTRIC, INC.

and

Case 25-CA-23783

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION
NO. 305

Raifel Williams and Miriam C. Delgado, Esqs.
for the General Counsel.

Michael L. Einterz, Esq.,
of Indianapolis, Indiana,
for the Respondent.

Michael L. Closson, Sr.,
of Fort Wayne, Indiana,
for the Charging Party.

DECISION

Statement of the Case

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried in Fort Wayne, Indiana, on May 6, 1997, on a complaint, dated September 22, 1995, alleging that the Respondent, Hoagland Electric, Inc., has refused to hire and to consider for hire 33 named electricians because of their union affiliation, in violation of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). The charge was filed by International Brotherhood of Electrical Workers, Local Union No. 305 (the Union) on March 7 and amended on June 30, 1995. The Respondent filed a timely answer, admitting the jurisdictional allegations in the complaint and denying the substantive allegations of unfair labor practices.

On the entire record in this case and after consideration of the briefs filed by the General Counsel and the Respondent, I make the following

Findings of Fact

I. Jurisdiction

Hoagland Electric, Inc. is a corporation with an office and place of business in Fort Wayne, Indiana, where it is engaged as an electrical contractor in the construction industry. With purchase of goods valued in excess of \$50,000 from points outside the State and services in excess of \$50,000 in States other than Indiana, the Respondent is admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Charging Party, International Brotherhood of Electrical Workers, Local Union No.

305, is a labor organization within the meaning of Section 2(5) of the Act.

Facts

5 II. Background

Hoagland Electric, Inc. is owned and operated by Daniel Hoagland with his wife Karen, as secretary and treasurer, constitute the supervisory hierarchy. In 1995, the Company employed approximately 10 electricians, five of whom were journeymen and the remaining 5 were apprentices. On February 12 and 13, 1995, Hoagland placed an advertisement in the Fort Wayne Journal Gazette, seeking: "Electricians and Journey Persons, Masters, apprentices with commercial final experience" (G.C. Exh. 8). Applicants were directed to send their resumes to a confidential box address which was located at the Fort Wayne Journal Gazette.

On February 13, 1995, Michael L. Closson, the Union's organizer and assistant business agent, sent the resumes of 33 electricians by certified mail to the box number address (G.C. Exh. 8(a)). The accompanying letter states in part that the applicants are unemployed union electricians who are certified journeymen with at least 7 years' experience who appear suitable to the Company's hiring standards. In the letter, the Union promised to assist in the scheduling of interviews and also indicated that a copy of the letter had been sent to the Labor Board (G.C. Exh. 9(a)). The return receipt for the letter, including the resumes, is dated February 14, 1995, and shows the signature of Steve Beam (G.C. Exh. 10).

Hoagland Electric never responded to the Union's letter nor to the 33 resumes. According to the General Counsel, the Respondent's failure to consider the applicants was based on its antiunion animus.

Discussion

The General Counsel presented five witnesses, including Daniel Hoagland. He testified that he was seeking to hire electricians at about the time his company placed the advertisement in the local papers but that he received only two responses pursuant to the advertisement. Although he hired several electricians during that time period, he did not hire anyone in response to the advertisement in the Journal Gazette.

Closson testified that he mailed by certified mail 33 resumes of qualified electricians under cover of his letter dated February 13, 1995, to the address shown in the advertisement of the Fort Wayne paper, but that he received no response from the Company.

The next witness was Mark Sumney, advertising sales manager for the Fort Wayne Newspapers, the Journal Gazette and the News Sentinel. This witness explained the Journal Gazette's procedure in handling responses to a confidential box or a blind box. He testified that replies to such advertisements are usually kept 30 days after the expiration of the advertisement. When asked whether he had any information with respect to Hoagland's advertisements, Sumney responded that he had no such information and when asked who at the paper would know, he stated unequivocally: "No one" (Tr. 62). A fair summary of his testimony is that in the ordinary course of business it is unlikely that responses to such advertisements get lost, although considering the human factor such a possibility always exists.

Jack Miller, owner of Miller's Delivery Service, testified that he was the contract carrier for the U.S. mail in Fort Wayne and that Steven Beam was his employee who signed the certified mail receipt showing that he had delivered the Union's mail to the Fort Wayne newspapers. The record is accordingly clear that the Union's letter and resumes were received

by the newspaper.

Daniel Long, a member of Local 305 for 22 years, testified that in January or February 1995 he went to the Respondent's office requesting to fill out a job application. He was wearing a hat and a jacket which revealed his IBEW affiliation. Someone from the Company, possibly a woman, told him that "they weren't accepting applications at the time" (Tr. 146). This, according to the General Counsel, showed the Respondent's antiunion animus. However, Long's testimony was ambivalent and vague. The witness could not remember the date of his contact with the Respondent, he could not identify the individual with whom he spoke, and there was no evidence that the Respondent was accepting applications from other candidates. I cannot find that this episode showed antiunion animus.

The record accordingly presents the scenario that the Union responded by certified mail to an advertisement placed by the Respondent, seeking electricians. The Union, however, did not receive any reply, nor were any of the 33 applicants contacted whose resumes were submitted by certified mail. The Respondent simply argues that the Company did not receive any of the resumes, and that he would have rejected them in any case, because the applicants indicated in their resumes that they were not interested in light commercial and residential work.

To find merit in the General Counsel's case, even assuming the agency theory between the Company and the Fort Wayne Gazette, I would have to discredit the testimony of the Respondent's only witness, Daniel Hoagland, the person who would know why the Union did not receive a response to its letter. Hoagland testified unequivocally (Tr. 155): "Prior to today, I have never seen this letter," and, again after his counsel reminded him that he was under oath, he stated: "I am telling the Judge I have never seen this before today."

Having observed the demeanor of the witnesses for their truth and candor, I cannot find that any of the witnessed in this case lied. Hoagland who appeared modest and sometimes unsure was firm, however, with respect to this issue. He did not give me the impression that he was willing to lie under oath for the purpose of this case. A possible explanation as to the whereabouts of the Union's response and the 33 resumes is that they were lost by the Journal Gazette or disappeared on the way to the Respondent's office. Under these circumstances, I find that the General Counsel has not established a violation of the Act.

Conclusions of Law

1. Hoagland Electric, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local Union No. 305 is a labor organization within the meaning of Section 2(5) of the Act.

3. The record does not support a finding of violation of the Act, as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

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The complaint is hereby dismissed in its entirety.

Dated, Washington, D.C. October 9, 1997.

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Karl H. Buschmann
Administrative Law Judge

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¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.